IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

A.S.No.485 of 2001

O.S.NO.94/1996 OF THE ADDITIONAL SUB COURT, PALAKKAD
(The year of the suit is corrected as O.S.No.94 of 1996 instead of O.S.No.94 of 1995 vide order dated 1.3.2007)

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APPELLANT/PLAINTIFF:-

SATHI VILASINI, AGED 58 YEARS,
WIFE OF CHANDRASEKHARAN,
PACHA VEEDU, PATHAYAPURA, POST PALLASSENA, PALAKKAD.

BY ADV. SRI.O.RAMACHANDRAN NAMBIAR
SMT.K.P. SANTHI

RESPONDENT/DEFENDANT:-

JAYASREE, AGED 43 YEARS, WIFE OF R.T.VELAYUDHAN,
DOOR NO.15/522, KOPPAM AMSOM,
PALAKKAD TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.N.HARIDAS
SRI.P.N.SASIDHARAN

THIS APPEAL SUIT HAVING BEEN FINALLY HEARD ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.Padmanabhan Nair,J.

A.S.No.485 of 2001

Dated, this the 19th day of March, 2007

JUDGMENT

The plaintiff in O.S.No.94 of 1996 on the file of Additional Sub Court, Palakkad is the appellant. The plaintiff filed the suit for recovery of possession on the strength of title. It is averred that the property originally belonged to one Kalyani, D/o.Kasi. The plaintiff purchased the same under Exhibit A1 registered assignment deed dated 22.11.1982. It is averred that the property situate on the western side of the 100 Feet Road proceeding to Malampuzha. It is further averred that the plaintiff was residing with her husband at Bombay and at that time the defendant-respondent trespassed into the property and reduced the same into her possession. Hence the suit for recovery of possession on the strength of title. The defendant-respondent entered appearance and filed a written statement contending that the appellant has no title or possession over the property described in the plaint. According to her, the property belonged to one A.K.Saradha, who sold the same to her under Exhibit B1

sale deed dated 22.3.1990. It is contended that after purchasing the property when she started construction, the suit was filed with *mala fide* intention.

2. A Commissioner was deputed, who filed Exhibit C1 (a) interim report and Exhibit C1 final report and Exhibit C1(b) plan. On the side of the plaintiff, her husband was examined as P.W.1. The defendant gave evidence as D.W.1. The Commissioner was examined as C.W.1. The learned Sub Judge found that the plaint description does not tally with the property covered by Exhibit A1 and dismissed the suit. Challenging that judgment and decree that the appeal is filed.

3. The learned counsel appearing for the appellant though raised several contentions, ultimately pressed for a remand. It is submitted that the suit was dismissed on the sole ground that the description of the plaint schedule property does not tally with the description of the title deed relied on by the plaintiff. It is submitted that a perusal of the plan appended to the sale deed with Exhibit C1(b) plan would show that there is a mistake either in the plan appended to the sale deed or in the plan submitted by the Commissioner.

4. Sri.N.Haridas, learned counsel appearing for the respondent-defendant submitted that the plan submitted by the Commissioner was prepared with the help of a Surveyor attached to the Municipality after verifying with the revenue records and there is absolutely nothing wrong with it. It is contended that though plaintiff claims to have purchased the property in the year 1982, she approached the Court only in the year 1996 for recovery, which shows lack of *bona fides*. It is also argued that the defendant had already started construction of a residential building in the property purchased by her and the construction of basement was already over and when the further construction was in full swing, the plaintiff filed the suit and obtained an order of injunction.

5. After hearing the arguments advanced by both sides, I am of the view that a brief, but reasonable opportunity can be given to the plaintiff to get the property covered by Exhibit A1 sale deed identified. Though it is not specifically stated so in the judgment, it is evidently clear that the Court below has not considered the correctness or otherwise of Exhibit C1, but at the same time found that the description of the property given in

the title deed did not tally with the plaint description. So, it is only just and proper that an opportunity is given to the plaintiff to file an application to give a direction to the Commissioner to conduct another local inspection and file a supplementary report and plan and then consider the claim of title raised by the plaintiff. For that purpose, the matter has to go back.

In the result, the appeal is allowed. The judgment and decree passed by the Court below are hereby set aside. The suit is remanded. The parties will appear in the Court below on 12.4.2007. There will be a direction to the Additional Sub Judge to try and dispose of the suit as expeditiously as possible, at any rate, within six months from the date of appearance of parties. Office is directed to transmit the records forthwith. The Court Fee paid on the memorandum of appeal shall be refunded to the appellant. C.M.P.No.3488 of 2001 and I.A.No.547 of 2007 shall stand dismissed.

K.Padmanabhan Nair
Judge

vku/-